

# ARIZONA

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## Understanding the 'Slumlord Law'

What do property managers and licensees need to know?

*Reprinted from the May 1999 issue of Arizona Realtor Digest, with permission*

The "slumlord bill," Senate Bill 1278, was signed into law by Governor Jane Dee Hull on March 22, 1999 and will take effect on August 11, 1999. The following is the transcript of an interview conducted by the Arizona Association of Realtors® (AAR) with Jerry Landau, Special Assistant to the Maricopa County Attorney, Tom Farley, AAR Government Affairs Director, and Michelle Lind, legal counsel to AAR.

**Q:** How does a property receive a slum designation?

**AAR:** A governing body, a city, town, county or the state Attorney General's office, may designate a property as a slum property, and will establish the process for making such a designation. If the owner does not make the repairs in a reasonable amount of time, the city can bring an action against the owner in court. If the court determines that the property is in violation of the statute, then the court can appoint a receiver to abate the slum condition and order the property to be inspected for a three-year period. Once the owner has taken the required action, the owner can go to Superior Court to have the designation removed.

**Q:** Will property managers be responsible financially if the owner doesn't have the money or doesn't pay for the repairs to slum property?

**Landau:** The property manager is not financially responsible. The owner must pay.

**Q:** Must the property manager disclose to current and new tenants that the property is designated a "slum property" and that the property is subject to random inspections by the jurisdiction for up to three years?

**AAR:** For new tenants, yes. The fact that the property has been designated "slum property" and is subject to governmental inspection should be disclosed to new tenants. See A.A.C. R4-28- 1101(B).

For current tenants, the statute provides that the "city, town or county or the state" [A.R.S. § 33-1904(2)] will establish the process which may include notification to current tenants. The statute also states that the inspecting authority will request tenant consent before entering the building; therefore, current tenants will likely receive governmental notification.

**Q:** Will property managers be responsible for criminal nuisance on a residential property?

**AAR:** Yes. The property manager must take legally available action to abate the criminal nuisance. One of those legally available remedies is to contact the phone number provided on the notice issued by the local governing body. A second remedy is for an owner to commence a forcible entry and detainer action against the tenants of the unit listed on the notice. If the owner or property manager makes a good-faith attempt to handle the nuisance, they will not be held liable.

**Q:** Is there recourse or a protest mechanism provided to the owner if the

*Continued on page 7*

### What does the 'slumlord law' involve?

#### Designation of slum property

This refers to residential rental property that has deteriorated or is in a state of disrepair and manifests one or more conditions listed in the statute that are a danger to health or safety of the public. Owners of deteriorated properties with conditions that are a danger to the public will be responsible for correcting the problems. The law allows a city, town, county or the state to inspect residential rental property that has been designated as a slum property.

#### Abatement of criminal nuisance

Property regularly used in the commission of a crime is deemed a nuisance. An action may be brought in Superior Court against the owner, the owner's managing agent, or other party responsible for the residential property to abate and prevent the criminal activity. The courts have the power to abate the nuisance, assess civil (monetary) penalties, and enter orders to prevent further criminal activity. Landlords will have the right to terminate a rental agreement for acts found to constitute a nuisance pursuant to Section 12-991 of the statute.

#### Owner Registration

Registration of information regarding the owner of a residential property with the County Assessor is not new; the information, including name, address and telephone number of the owner, is already there. This statute enhances it, requiring information to be kept up-to-date; changes to information must be reported within 10 days of the change. Rental properties owned by a corporation, trust, partnership or out-of-state owner will be required to record a statutory agent who lives in Arizona.

# Major rule change: All disclosures must be in writing

By Thomas A. Stoops

As many of you are aware, the Arizona courts have recognized that the Commissioner's Rules have the force and effect of law. *Red Carpet-Barry & Associates v. Apex Associates, Inc.*, 130 Ariz. 302, 635, P.2d 1224 (App. 1981). Therefore, a material violation of the Commissioner's Rules gives rise to a private cause of action in a court of law, or may be used to defeat a broker's claim for a real estate commission and, of course, can be used as a basis to discipline the broker in an administrative action before the Arizona Department of Real Estate

## The rules have changed

Effective February 3, 1999, the Department modified numerous Commissioner's Rules, most of which reflected existing policies and procedures of the Department. This article will address the importance of the addition of a mere two words to A.A.C. R4-28-1101(B), those words being "in writing." Although this change has been unheralded, it will have a dramatic effect on the liability of brokers who fail to document their disclosures in writing.

## Duty to disclose known information

Commissioner's Rule R4-28-1101(B) has always required a real estate broker or salesperson to disclose to all other parties "any information which the licensee possesses" which "materially and adversely affects the consideration to be paid by any party to the transaction." The old Rule did not require that the disclosures be in writing.

This same Rule has also always contained a specific non-exhaustive list of four types of defects or information that a broker must disclose to the other party (if the broker is aware of such defects). Although the new list contains some slight changes in grammar, the list is essentially the same. The licensee must disclose:

- Any information that the seller or landlord is, or may be, unable to perform;
- Any information that the buyer or tenant is, or may be, unable to perform;
- Any material defects existing in the property being transferred;

- The possible existence of any lien or encumbrance on the property being transferred.

The first item above is expanded in the new Rule, as the first item under the old Rule was limited to information where the seller could not perform due to defects in title. The new Rule requires disclosure for any other reason, not just defects in title. This is only a minor change, but because one could reasonably argue that the disclosure of any reason that the seller may not be able to perform was already included in the general language of the Rule, even if not included in the specific four-item list.

## A.A.C. R4-28-1101 has the greatest impact on broker liability

Although to a greater or lesser extent, all of the Commissioner's Rules have some impact on the liability and business relations of brokers, none is so key in defining the specific perimeters of the broker's duties as is R4-28-1101 (Duties to client). Of course, most licensees are familiar with this regulation which sets forth not only duties owed to clients, but also duties to all other parties to a transaction.

## Duty to disclose in writing

The old Rule did not specify that the disclosures be in any particular form, but the new Rule does; it now reads:

"A licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially and adversely affects the consideration to be paid by any party to the transaction..."

## The effect on broker liability

It should be noted that the Rule draws no distinctions between residential and commercial transactions. "Seller Property Disclosure Statements" (SPDS) are far more commonly provided in residential transactions, and unless the broker knows something adverse about the property that is not already included in the seller disclosure form, that form should satisfy the writing requirements of the Rule (assuming the defect is sufficiently disclosed in the SPDS). However, in a typical commercial transaction, the due diligence falls much

more heavily on the buyer and it is less likely that there will be a seller disclosure in writing. It would appear that under the new Rule, the broker cannot be relieved from the obligation to make disclosures even where the buyer or seller waives such disclosure. After all, the disclosure requirement is imposed by Rule, not by contract, and nothing in the Rules suggests that the parties to a transaction can waive a Department Rule.

A somewhat tricky aspect of this Rule is the issue of how information should be included in the written disclosure. Of course, it is easy enough to say that if anything would adversely affect the consideration to be paid, it should be disclosed. However, it is not unlikely that a broker may discuss with the parties many details concerning the property, some of which the broker may feel are of little importance to that party. If the broker discloses only those facts which the broker unilaterally decides are material, the broker may be open to suit for failing to disclose in writing those facts he deems less important even if such facts were disclosed verbally. That is to say, if a jury later determines an adverse fact was material, it may be no defense that the broker disclosed that fact verbally.

## The necessity of a seller disclosure form

This new Rule makes it apparent that brokers in every type of transaction would be well-advised to urge the seller to make a full written disclosure of all adverse facts known to the seller concerning the property. As already mentioned above, this is extremely common in residential transactions and hopefully will become more common in commercial transactions. Under the new rule, absent a proper SPDS regarding the property, the broker must make an independent written disclosure of all adverse facts. Brokers would be well advised to begin adopting standard written disclosure forms for all of their salespersons to use in every transaction.

*Thomas A. Stoops is a partner in the Phoenix law firm of Stoops & Klobert, P.C. and is a State Bar Certified Real Estate Specialist*



Jerry Holt

## News From The Commissioner

**A**ccording to a rumor making the rounds, there is a new real estate statute or rule which requires licensees to tape record their conversations with prospective buyers while showing property.

One person who inquired about this "rule" said she had read about it in a tabloid published by one of the state's largest real estate schools. Another said she heard it from her broker.

Let me quash this rumor right now! There is no such statute or rule.

There is, however, an important change in Commissioner's Rule A.A.C. R4-28-1101(B) which is explained in Thomas Stoops' excellent article on page 2. The change requires disclosures of any information which materially and adversely affects the consideration to be paid by any party to a transaction in writing. Before the rule change, the disclosure could be verbal. I suggest you read Tom's article carefully.

Another change to R4-28-1101(B) requires the disclosure that the seller or lessor "is or may be unable to perform." Under the old rule, disclosure was limited to inability to perform "due to defects in title."

This is an important distinction, and I believe it should be easily understood by all.

### **Compensation Sharing**

You should also be aware of a change in A.A.C. R4-28-701. The revised rule states: "A real estate broker representing a

party in a transaction shall disclose to all the parties in the transaction, in writing before completion of the transaction, the identity of any licensee receiving compensation.

The new words here are "in writing before completion of the transaction." Somehow, some of you have gotten the idea that this rule will not be strictly enforced (another rumor). Wrong. The Department enforces all Commissioner's Rules.

### **Education Waivers**

The Department is empowered, by statute, to waive a portion of prelicensure education requirements for persons who hold real estate license in another state, and who wish to obtain an Arizona real estate license.

The Department may waive any of the 90 hours required for licensure except 27 hours of "Arizona specific" education. Most real estate schools require an out-of-state applicant to pass both the "general" and "Arizona specific" portions of the school examination before certifying them to take the State examination.

I feel that 27 hours of prelicensure education in "Arizona specific" courses may not be enough. The licensee will have, at best, an entry-level knowledge of Arizona real estate issues. So, I'm leaning toward supporting legislation to be offered by the Real Estate Educators Association to increase the requirement to 45 hours. I am interested in what you think about this change. If

you have an opinion, please write and tell me what you think.

### **Are you on our electronic mailing list?**

I'm pleased to see that more than 480 real estate professionals have subscribed to our "Late-Breaking News" e-mailing list. The list is growing at the rate of five or six names daily.

Subscribers are notified when significant news from the Department is posted on our Web site. This occurs one or two times each week—sometimes more often. It is an excellent way to keep on top of the latest developments.

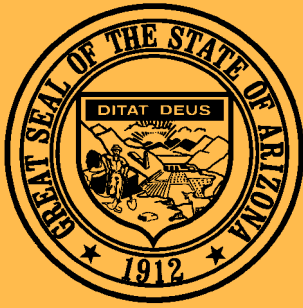
If you would like your name added to the list, just drop an e-mail to [cdowns@adre.org](mailto:cdowns@adre.org) with MailingList in the subject line.

### **1999 Arizona Real Estate Law Book**

West Group, the publishers of the bound Arizona Revised Statutes you see in every law library, was the successful bidder for publication of the 1999 *Arizona Real Estate Law Book*. We are pleased, because this means our law book will contain the same annotations (case law, historical notes) as do the ARS books.

We have received the proofs of the sections containing the Commissioner's Rules and the Attorney General's Fair Housing Rules, and will publish this part of the book very soon. The balance of the book will be published shortly after the changes in real estate statutes become effective on August 11.

The availability of the 1999 edition will be announced in the *Bulletin* and on our Web site at [www.adre.org](http://www.adre.org). The price has not yet been established, but we anticipate it will be the same as the 1997 edition—\$13 for the Law Book, \$7 for the special seven-ring binder. You may use your present binder if you have one.



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## 1999 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. *Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.* All designated brokers shall attend a broker audit clinic once during every four-year period after their initial attendance.

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Standards.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1999. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

### PHOENIX

Industrial Commission Auditorium  
800 W. Washington

#### 1 p.m. to 4 p.m.

June 17  
July 8  
July 15  
August 19  
September 9  
September 16  
October 21  
November 18  
December 16

### TUCSON

State Office Building  
400 W. Congress  
Room 222

#### 1 p.m. to 4 p.m.

June 16  
July 14  
August 18  
September 15  
October 20  
November 17  
December 15

## Current license must now be submitted with sever or change form

The new Commissioner's Rules, which became effective February 3, now require that all sever or change forms

submitted by employing or designated brokers be accompanied by the affected person's current real estate license.

**The mission of the  
Arizona Department of Real Estate  
is to safeguard and promote the public interest  
through timely and capable assistance,  
fair and balanced regulation,  
and sound and effective education.**



# ADMINISTRATIVE ACTIONS

## REVOCATIONS

**H-1989**

**James A. Worman  
Scottsdale**

DATE OF ORDER: May 17, 1999

FINDINGS OF FACT: In January 1997, Respondent submitted an application for a temporary membership-camping salesperson's license. The license was issued, and in March 1997, Respondent submitted an application for a regular license which was also issued.

In his application, Respondent failed to disclose a 1989 conviction for Public Dexual Indecency, a 1990 conviction for Disorderly Conduct, and a later conviction for Indecent Exposure.

Respondent failed to appear at the Administrative Hearing for this matter.

VIOLATIONS: Respondent violated A.R.S. §§ 32-2153(A)(3), (B)(1), (B)(3) and (B)(7) in failing to disclose his arrests and convictions. Respondent failed to maintain on file with the Department his current residence address, violations of A.R.S. § 32-2153(A)(3) and A.A.C. R4-28-301(F)>

DISPOSITION: Respondent's membership-camping salesperson's license is revoked.

## LICENSE APPLICATIONS DENIED

**H-1997**

**Bruce E. Bernloehr  
Scottsdale**

DATE OF ORDER: May 10, 1999

FINDINGS OF FACT: From October 1985 until February 1986, Applicant was licensed as an Arizona real estate salesperson. In February 1986 he became a designated broker and retained that license until February 1988 when, according to Applicant, he voluntarily turned in the license. It appears that Applicant may have let the license lapse. No disciplinary actions were taken against these licenses.

Applicant was also licensed in Minnesota. From March 1985 until March 1986, Applicant bought Minnesota residential properties that were subject to loans secured by mortgages. Applicant falsely promised to assume the mortgage payments. He leased the homes to tenants at less than the monthly mortgage payments then spent the rent proceeds on personal expenses. Applicant did this on 10 properties, all of which went into foreclosure within two months of Applicant's "assumption" of the payments. The loans were FHA and VA insured. In July 1986, Applicant was indicted on 10 counts of federal mail fraud, because the U.S. Postal Service was used, and one count of equity skimming, in violation of the federal criminal code.

A jury found Applicant guilty of eight counts of mail fraud and one count of equity skimming. He was sentenced to three years in prison to be followed by three years' probation. In December 1996, Applicant successfully completed his probation and was discharged. He had moved

to Arizona by that time.

In January 1998, Applicant filed his application for a salesperson's license in which he disclosed the federal convictions. The Department denied the application and the Applicant requested an Administrative Hearing.

At the hearing, Applicant submitted numerous exhibits in an effort to show good character. Many of the exhibits carried very little weight. Applicant did not submit any weighty evidence relating to rehabilitation, a change of character or his present trustworthiness.

VIOLATIONS: Applicant's conduct demonstrates a violation of A.R.S. §§ 32-2153(B)(2), conviction of any "crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense;" (B)(5), committing "fraud or dishonest dealings;" (B)(7), not being a person of honesty, truthfulness and good character; and (B)(10), violating federal law that "relates to real estate...."

DISPOSITION: License application denied.

**99A-002**

**Charlotte L. Sandquist  
Gilbert**

DATE OF ORDER: May 17, 1999

FINDINGS OF FACT: In her November 1998 application for a real estate salesperson's license, Petitioner disclosed a conviction for shoplifting and two convictions for driving on a suspended license.

The Department denied the application. Petitioner requested an Administrative Hearing, but did not appear at the hearing.

VIOLATIONS: Petitioner has been convicted of a crime of moral turpitude or any other like offense in violation of A.R.S. § 32-2153(B)(2). She has not shown she is a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7). In failing to appear in court for five appearances related to arrests, she violated the terms of a criminal or administrative order, decree or sentence, in violation of A.R.S. § 32-2153(B)(9). She violated state laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).  
DISPOSITION: License application denied.

## CONSENT ORDERS

**99A-061**

**Steve Hardman, dba Hardman  
Real Estate Services  
Tucson**

DATE OF ORDER: April 29, 1999

FINDINGS OF FACT: In August 1980, Respondent was issued an original real estate broker's license. He is presently licensed as a self-employed broker, dba Hardman Real Estate Services.

One property being managed by Respondent was the Glenn Plaza Apartments in Tucson owned by James Haun. Haun filed a complaint with the Department alleging irregularities in Hardman's

management of the property based on several withdrawals from the property management trust account. The withdrawals, totaling \$8,000, appeared on the bank's statements but were not reflected on the monthly general ledger information provided to him by Hardman.

A May 1997 audit of Hardman's property management trust accounts conducted by the Department revealed that:

a. Withdrawals from the Glenn Plaza trust account had been made by the bank in March and June, 1995, for payments on Hardman's small business loan.

b. Hardman did not discover the withdrawals until October 1995.

c. In September 1996, the IRS levied Hardman's general broker's trust account, which he maintained for management of several single-family residences, and withdrew \$8,056.49.

d. Hardman did not discover the withdrawal until December 1996.

e. The accounts were properly established as trust accounts, which should have been sufficient to preclude withdrawals for Hardman's personal obligations.

Because it was determined that the bank had mistakenly withdrawn money from the Glenn Plaza Apartments trust account, and Hardman had repaid the account for the monies withdrawn, the Department did not pursue disciplinary action against his license, despite the delay in his becoming aware of the withdrawals.

In February 1999, a Department auditor conducted a follow-up audit. The following were noted:

a. In November 1997, the IRS levied the "Cross Roads Account," another of Hardman's property management accounts, in the amount of \$1,108 in payment of Hardman's personal obligations, and charged \$1079 for analysis service.

b. Although it appears that his bookkeeper knew of the discrepancy, Hardman was unaware of the withdrawal until it was pointed out to him by the Department auditor.

c. The Cross Roads account was not properly established and designated as a trust account.

d. Hardman's property management agreements contained automatic renewal provisions which did not include the requirement that Hardman provide appropriate notice to property owners of the upcoming renewal date.

e. Trust account records had not been updated to remove Phyllis Hardman's name as a signer on the account, even though she was no longer in Hardman's employ.

In mitigation and explanation, Hardman stated that

a. The problems described herein occurred due to extreme personal family and financial problems.

b. The Cross Roads Account has not been

*Continued on page 6*

properly established as a trust account; and

c. He repaid the withdrawals from the property management accounts upon learning of their occurrence.

**VIOLATIONS:** Hardman failed to properly establish and maintain all of his property management trust accounts and did not designate the Cross Roads account as a trust account, in violation of A.R.S. § 32-2174(A). His conduct constitutes negligence in performing the duties for which a broker's license is required, within the meaning of A.R.S. § 32-2153(A)(22).

**DISPOSITION:** Hardman shall attend six hours of continuing education classes on the subjects of recordkeeping and trust accounts. The classes shall be in addition to those required for license renewal. Hardman to pay a civil penalty in the amount of \$400.

#### **99A-060**

**John A. Sedwick**

**Tucson**

**DATE OF ORDER:** May 18, 1999

**FINDINGS OF FACT:** In his November 1998 application for an original real estate salesperson's license, Respondent failed to disclose a 1976 conviction for DUI in Tracy, Calif.

**VIOLATIONS:** Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).

**DISPOSITION:** Respondent's real estate salesperson's license is suspended for 14 days to begin 10 days after the entry of this Order. Respondent to pay a civil penalty in the amount of \$200.

#### **99A-049**

**Judy Kay Samons, aka Judy Kay Marko, aka Judy Kay Bussing, aka Judy Kay Waters**  
**Lake Havasu City**

**DATE OF ORDER:** May 20, 1999

**FINDINGS OF FACT:** In her 1998 application for an original real estate salesperson's license, Respondent disclosed a 1998 misdemeanor conviction for failing to report her son's location to his probation officer. She was placed on probation for one year.

She failed, however, to disclose a 1969 conviction for larceny-shoplifting in Spokane, Wash., for which she was sentenced to five days in jail. **VIOLATIONS:** By failing to disclose the 1969 conviction, she procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).

**DISPOSITION:** Respondent's real estate salesperson's license is suspended for one month effective August 1, 1999 through August 31, 1999. Respondent to pay a civil penalty in the amount of \$200.

#### **H-1941**

**Carl A. Barton**

**Tucson**

**DATE OF ORDER:** May 17, 1999

**FINDINGS OF FACT:** The Department issued Respondent an original real estate broker's license in February 1993. His current license will expire on February 28, 1999.

During the relevant times herein, until July 3, 1996, Barton was employed as an associate broker with Axiom Realty, a sole proprietorship licensed as a real estate broker. On April 9, 1996, Axiom, through Barton, prepared a real estate purchase contract on behalf of Dorothy Finley to sell her property located in Sierra Vista to CLB Enterprises International Corporation. The contract identifies Axiom and Barton as the agent for the seller exclusively.

The purchase contract stated that CLB was to provide a check in the amount of \$5,000 as an earnest money deposit with an escrow closing date of July 9, 1996. The contract stated that in the event of the buyer's default, the seller would retain the earnest money deposit as a sole remedy for seller's damages.

On April 9, 1996, CLB, acting through Charles L. Beatty, gave Barton a \$5,000 check, post-dated to April 15, 1996. Barton was informed by Beatty that the account on which the check was written did not have sufficient funds to cover the check.

Barton thereafter accepted an unsecured promissory note for \$5,000 payable to Finley as a substitute for the earnest-money deposit. The note stated that CLB would make payment of \$5,000, plus interest, to Finley at Fidelity National Title, on or before July 9, 1996. The note was dated April 10, 1996.

Finley did not authorize Barton to accept a promissory note in lieu of earnest money. Barton did not inform Finley that he had accepted the note.

Barton prepared an addendum to the contract, dated July 2, 1996, which extended the escrow closing date to September 9, 1996. The addendum also required CLB to pay rent in the amount of \$4,000 per month for limited use of the property prior to closing. CLB was required to pay \$1,000 per month in cash, with the remaining \$3,000 accruing per month to be paid at the close of escrow.

Finley received no rent payments from CLB. CLB failed to comply with the terms of the note and failed to pay any portion of the amount due under the note.

Barton had knowledge of CLB's failure to make payment as required by the note. He failed to thereafter disclose those circumstances to Finley. He also failed to take any other action to enforce or assist in enforcing Finley's rights, and/or CLB's obligations under the note.

On July 3, 1996, Barton's employment with Axiom ended. Since that date, he has been a

self-employed real estate broker.

On August 9, 1996, Finley, through her attorney, gave notice of default to the buyer and notice of her intention to terminate the purchase contract. CLB failed to cure the default. Finley thereafter sought the \$5,000 earnest money as her remedy for damages.

In September 1996, Axiom Realty advised Finley, upon her inquiry, that Axiom was not holding the earnest money deposit and that Barton was not associated with Axiom.

On September 13, 1996, Finley's attorney wrote a letter to Fidelity National Title requesting that the \$5,000 earnest money in escrow be transferred to Finley. On September 16, 1996, Fidelity advised the attorney that no funds had every been deposited into escrow.

**VIOLATIONS:** Barton failed to inform his client that the buyer might be unable to perform due to insolvency or otherwise, in violation of A.A.C. R4-28-1101(B)(2). He disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). He demonstrated negligence in performing acts for which a license is required, in violation of A.R.S. § 32-2153(B)(22).

**DISPOSITION:** Barton's real estate broker's license is suspended for 18 months, to commence 20 days from the date of this Order. Barton to pay a civil penalty in the amount of \$500.

The broker, Axiom Realty, was absolved of any wrongdoing in this matter and was therefore excluded from this administrative action.

#### **H-1985**

**Carlton S. Rebeske**

**Mesa**

**DATE OF ORDER:** May 12, 1999

**FINDINGS OF FACT:** In his March 11, 1998 application for an original real estate salesperson's license, Respondent filed to disclose that he had been convicted in Bakersfield (Calif.) Municipal District Court in July 1990 for vandalism. He was placed on three years' probation and ordered to pay a fine, damages and court costs.

He was also convicted in East Phoenix Justice Court on November 19, 1998 (while licensed), for interference with judicial proceedings. He was placed on probation for one year. He did not notify the Department of the conviction in writing within 10 days as required by A.A.C. R4-28-301(F), formerly (C).

**VIOLATIONS:** By failing to disclose the 1990 conviction, Rebeske procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).

**DISPOSITION:** Rebeske's real estate salesperson's license is suspended for 30 days to begin 10 days after entry of this Order. Rebeske to pay a civil penalty in the amount of \$100.

# Slumlord law

*Continued from page 1*

owner wants to fight the citation for criminal nuisance?

Landau: The Superior Court makes the determination based on the information provided by the local jurisdiction. All legal recourse available to defendants in Superior Court is available to property owners.

Q: How long will owners be given to correct the nuisance or make repairs?

Landau: If the citation is an abatement of criminal nuisance, the owner must start the action in five business days. If the citation is a slum property designation, the statute says that the property will be subject to inspection at any time, but no specific time period is established. If it is not fixed by the time of inspection, then the governing body can ask the Superior court to assign a receiver to have the problem fixed and bill the owner.

AAR: Once an owner receives notice, the owner should begin to take action. If the problem is resolved before the inspection, no citation will be issued.

Q: Are property managers basically going to become property police?

Landau: Property managers are responsible for what is happening on their property. No one expects them to go around and start confronting drug dealers; it's too dangerous. In fact, we don't want them to be police. Property managers are responsible for taking steps to prevent problems and report problems.

Cities that are committed to abating criminal activity will provide police patrols to protect property. It has to be a partnership; no one person can do it, and no one person can leave it to another.

Q: Will a listing real estate salesperson or broker ever have any liability?

Landau: The bill primarily deals with the owner and property manager; if an agent sells the property and is not the owner or property manager, they don't seem to fit under the statute. We tried to make the bill pretty clear and pretty narrow as to who falls under it and who doesn't; we don't want to bring into the net people who shouldn't be brought in.

Q: How current is the Assessor's database going to be on the listings?

Landau: As current as is technically possible. There is no time-frame provided for in the bill, but most of the information is already available in the County Assessor's office. It is currently online in many counties through the Assessor's office. Citations will not be included in the information.

AAR: New information is now required on rental properties owned by a corporation, trust, partnership, or out-of-state owner. They are required to have a statutory agent listed.

Q: How does someone become a statutory agent?

AAR: The property owner can get a form or write a letter to the Corporation Commission stating the name, address

## Examples of slum property conditions [A.R.S. § 33-1901(3)]

- Structurally unsound exterior surfaces, roof, walls, doors, floors, stairwells, porches, railings
- Lack of potable water, inadequate sanitation facilities, inadequate water/waste pipe connection
- Hazardous electrical systems or gas connections
- Lack of safe, rapid egress
- Accumulation of human or animal waste, medical or biological waste, gaseous or combustible materials, dangerous or corrosive liquids, flammable or explosive materials, or drug paraphernalia

## Examples of criminal nuisances [A.R.S. § 33-1368(A)]

- Illegal discharge of a weapon
- Prostitution
- Threatening or intimidating
- Manufacturing, selling, transferring, possessing, using or storing of a controlled substance.
- Homicide
- Criminal street gang activity
- Assault

and telephone number of the person acting as the statutory agent.

Realtors® may obtain more information about this new legislation by visiting the Arizona Association of Realtors® Web site at

[www.aaronline.com](http://www.aaronline.com)

# DO YOU KNOW ABOUT THE 10-DAY RULES?

Apparently, many licensees do not. Commissioner's Rule A.A.C. R4-28-303(E) requires licensees to notify the Department within 10 days of any change in legal name or home address.

Some licensees who fail to renew their license on time tell the Department they did not receive a renewal notice. Usually, they didn't receive the notice because they changed their home address without notifying the Department.

Renewal notices are not required by statute; they are sent as a courtesy

to the licensee's home address. Not receiving the renewal notice does not mitigate late renewal.

Should you change your legal name or your home address, notify the Department within 10 days by sending an original signed letter (no faxes or e-mails are accepted), or submit Form LI-235. The form can be obtained from the Department's Web site at

[www.adre.org/library.html](http://www.adre.org/library.html)

or can be requested by surface mail by calling the Customer Services Division at 602/468-1414, extension 100.

If changing your legal name, you must supply proof of the change.

The other 10-day rule

Commissioner's Rule A.A.C. R4-28-301(F) requires that "every licensee shall, within 10 days of each occurrence, notify the Commissioner, in writing, of any change in information contained in the license certification questionnaire."

This questionnaire, part of the license application and license renewal form, asks whether, since the issuance

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# 10-day rules

*Continued from page 7*

of your original or last renewed license, have you:

1. Been convicted of a misdemeanor or felony?

2. Had an order, judgment, or adverse decision entered against you involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts or campgrounds?

3. Had any restriction, suspension, denial or revocation of a professional or occupational license or registration currently or previously held by you...or had any civil penalty imposed in connection with such license or

registration?

4. Had any order, judgment or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or the racketeering laws?

Should you find yourself in the position of having to answer "yes" to any of these questions, failure to report the incident to the Department within 10 days will only complicate the situation.

Should you have any question about reporting an incident, call the Department's Customer Services Division at 602/468-1414, extension 100.

## Web Links

### of interest to real estate professionals

National Association  
of Realtors®  
[www.realtor.com](http://www.realtor.com)

Arizona Association  
of Realtors®  
[www.aaronline.com](http://www.aaronline.com)

State of Arizona Agencies  
[www.state.az.us/all.html](http://www.state.az.us/all.html)

Arizona Legislative  
Information System  
[www.azleg.state.az.us](http://www.azleg.state.az.us)

Arizona Revised Statutes  
[www.azleg.state.az.us/ars/ars.htm](http://www.azleg.state.az.us/ars/ars.htm)

Current Traffic Speeds on  
Phoenix Freeways  
[www.azfms.com/Travel/freeway.html](http://www.azfms.com/Travel/freeway.html)

Federal Government Resources  
[www.suffield-library.org/federal.htm](http://www.suffield-library.org/federal.htm)

Latest Phoenix Weather  
<http://www.intellicast.com/weather/phx/>

Arizona Regional MLS  
(Arizona Republic)  
[www.azcentral.com/realestate](http://www.azcentral.com/realestate)

Home Pages of the 50 States  
[www.state.me.us/states.htm](http://www.state.me.us/states.htm)

Real Estate Regulatory Agencies  
in Other States  
[www.arello.org](http://www.arello.org)

For other interesting links, visit  
the Department of Real Estate  
Links page at  
[www.adre.org/links.html](http://www.adre.org/links.html)

## How to contact ADRE by phone, fax and modem

PHOENIX OFFICE  
(602) 468-1414

### Division Extension Numbers

Administration 135  
Auditing and Investigations 500  
Customer Services 100  
Education & Licensing 345  
Subdivisions 400  
Public Information Office 168

### Division Fax Numbers

Administration (602) 468-0562  
Auditing/Investigations (602) 468-3514  
Education and Licensing  
(602) 955-6284  
Customer Services (602) 468-0562  
Subdivisions (602) 955-9361  
Public Information Office (602) 955-6284

TUCSON OFFICE  
(520) 628-6940  
Fax (520) 628-6941

FAX RESPONSE SERVICE  
(602) 468-1414, Extension 3

### WORLD WIDE WEB

[www.adre.org](http://www.adre.org)

### E-MAIL

Customer Service  
[cdowns@adre.org](mailto:cdowns@adre.org)

All Other E-mail  
[adre@amug.org](mailto:adre@amug.org)

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2910 N 44th St Ste 100  
Phoenix AZ 85018